

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0491P

Sales Tax

For the month of April 2005

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment and filing of a monthly sales tax return for the month of April 2005. The taxpayer was one day late. The taxpayer is an Indiana company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the taxpayer filed the sales tax return with reasonable business prudence. In filing the return, the taxpayer made an initial filing, canceled the initial filing, and then filed a second return. The taxpayer went through this to make sure the amount was correct. The taxpayer's procedure caused the return to be one day late.

The Department points out that the taxpayer could have filed the initial return and then filed an amended return at a later date. This procedure detailed by the Department would have resulted in a timely filing.

Of further note, the taxpayer had a prior penalty abatement by the Department in March 2001 for the amount of \$9,000.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.